IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY**

**and**
**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT APPEAL NO : 265 of 2004**

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 28/11/2003 in WP NO : 24897 OF 2003 on the file of the High Court.)

Between:

D.V. Tirupathi Rao, S/o. Venkata Madhavarao,

Occ: Contractor, R/o. Door No. 2-18-23, Madhava Nagar,

Kakinada.

**..... APPELLANT**

AND

1 The Government of Andhra Pradesh, rep. by its Principal

Secretary, Irrigation & CAD Department, Secretariat,

Hyderabad.
2 The Chief Engineer, Irrigation and Command Area

Development,Chief Engineer's Office, Erramanzil, Hyderabad.
3 The Superintending Engineer, Irrigation Circle,
Dowlaiswaram, East Godavari District.
4 The Executive Engineer, Godavari Head Works Division,
Dowlaiswaram, East Godavari District.
5 The Mandal Revenue Officer, Kakibnada (Urban), MRO Office,

Kakinada.

**.....RESPONDENTS**

**For the Appellant: Mr. R.N.V.ANANTHA KRISHNA, Advocate.**

**For the Respondents: GP FOR IRRIGATION & COMM AREA DEV.**

**The Court made the following :**

**Judgment**: (per Sri B. Sudershan Reddy, J)

We have elaborately heard the learned counsel for the appellant on the question as to whether the order under appeal suffers from any legal infirmities requiring our interference in exercise of our appellate jurisdiction.

The dispute centers around the demand made by the respondents herein demanding an amount of Rs.4,03,600/- (Rupees four lakhs three thousand and six hundred only) from the appellant towards the cost of two barges/punts. The dispute itself arises under the agreement dated 4.7.1995, entered into between the appellant and the State in respect of lease of barge bearing
No. B11 to the appellant on a monthly rent of Rs.21,360/-, at the rate of Rs.712/- per day. It is evident from the record that under another similar agreement of even date, barge/punt bearing No. 27 was also let out to the appellant on similar terms. The whole of the dispute had arisen because, according to the appellant, the barges under his custody were drifted into the sea and could not be located. The respondents herein have proceeded to recover the value of the lost barges. According to the appellant, the assessment made by the respondents as to the value of barges is highly excessive and not based upon any material. It is also the case of the appellant that the valuation made and the demand is absolutely baseless and unwarranted in the circumstances.

The learned single Judge upon consideration of the submissions made, came to the right conclusion that resolution of the issue raised by the appellant in his writ petition requires an elaborate enquiry as number of disputed questions of fact arise for consideration and the same cannot be undertaken by this Court in a summary proceeding under Article 226 of the Constitution of India. The learned Judge also found that the dispute between the appellant and the respondents arises out of a concluded contract and such disputes cannot form the subject matter of the judicial review proceeding in a public law remedy.

During the course of hearing of this appeal, learned counsel for the appellant inter alia contended that all that the appellant wants from the respondents is the statement of account/details as to how the said sum is being demanded from the appellant. Learned counsel for the appellant in clear and specific terms stated that the appellant does not insist for adjudication of the issue as to whether he is liable to pay the said amount. The only question is whether the respondents committed any error in not furnishing the accounts.

Since the writ petition was dismissed at the stage of admission, a detailed counter affidavit is filed explaining as to how the amount has been arrived at requiring the appellant to pay the same towards the value of the lost barges. Learned counsel for the appellant sought to raise some dispute about the method adopted by the respondents in arriving at the amount requiring the appellant to pay the said amount.

However after making his submissions at some length, learned counsel for the appellant appears to have realized and rightly, in our considered opinion, that the issue cannot be satisfactorily adjudicated in this writ appeal and accordingly, prays the Court to grant leave and liberty to get the claim adjudicated in a properly constituted proceedings.

We find no impediment to positively consider the request made by the learned counsel for the appellant for granting leave as prayed for. Leave is accordingly granted to the appellant to avail such remedies as may be available to him in law, in which event the matter shall be considered on its own merits uninfluenced by the dismissal of the writ petition and this writ appeal. Concededly, the issue raised by the appellant as to whether the demand suffers from any infirmity cannot be satisfactorily adjudicated in this proceeding under Article 226 of the Constitution of India.

This Court vide its order dated 16.02.2004 directed the respondents not to sell the attached property for recovering the amount in question. The order is subsisting as on today. In the circumstances, the appellant shall have the benefit of the order dated 16.2.2004 for a period of three weeks from today. The further proceedings in this regard shall depend upon the orders, if any to be obtained by the appellant.

The Writ Appeal is accordingly dismissed. No costs.

(B. Sudershan Reddy, J)

01..09..2004

(K.C. Bhanu, J)

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Note: Furnish Copy by day-after-tomorrow.

B/O

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SECTION OFFICER

To

1 Principal Secretary, Irrigation & CAD Department, Government

of Andhra Pradesh, Secretariat, Hyderabad.
2 The Chief Engineer, Irrigation and Command Area

Development,Chief Engineer's Office, Erramanzil, Hyderabad.
3 The Superintending Engineer, Irrigation Circle,
Dowlaiswaram, East Godavari District.
4 The Executive Engineer, Godavari Head Works Division,
Dowlaiswaram, East Godavari District.
5 The Mandal Revenue Officer, Kakibnada (Urban), MRO Office,

Kakinada.

6 Two CCs to the Government Pleader for Irrigation and

Command Area Development, High Court Buildings,

Hyderabad (OUT).

7 Two CD copies.